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# **PRELIMINARY DRAFT**

## **No. 3646**

**PREPARED BY  
LEGISLATIVE SERVICES AGENCY  
2005 GENERAL ASSEMBLY**

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### **DIGEST**

**Citations Affected:** IC 36-8-12.

**Synopsis:** Employment absence for volunteer firefighters. Prohibits an employer other than the state from disciplining an employee who is a volunteer firefighter for being absent from employment when the employee is responding to a fire or an emergency call. Allows a civil action against an employer who disciplines an employee for this reason. Specifies that the absence is not a violation of the ghost employment statute and that the supervisor of the employee who has authorized the absence has not committed ghost employment. Authorizes an employer to request proof that the employee was engaged in fire or emergency activity when absent, and provides that the employer is not required to pay salary or wages to the absent employee.

**Effective:** July 1, 2005.



A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 36-8-12-2 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this  
3       chapter:

4       "Employee" means every person in the service of another under  
5       a written or implied contract of hire or apprenticeship.

6       "Employer" means:

7       (1) a municipal corporation;

8       (2) an individual or the legal representative of a deceased  
9       individual;

10       (3) a firm;

11       (4) an association;

12       (5) a limited liability company;

13       (6) an employer that provides on-the-job training under the  
14       federal School to Work Opportunities Act (20 U.S.C. 6101 et  
15       seq.) to the extent set forth in IC 22-3-2-2.5; or

16       (7) a corporation or its receiver or trustee;

17       that uses the services of another for pay.

18       "Nominal compensation" means annual compensation of not more  
19       than twenty thousand dollars (\$20,000).

20       "Responsible party" has the meaning set forth in IC 13-11-2-191(d).

21       "Volunteer fire department" means a department or association  
22       organized for the purpose of answering fire alarms, extinguishing fires,  
23       and providing other emergency services, the majority of members of  
24       which receive no compensation or nominal compensation for their  
25       services.

26       "Volunteer firefighter" means a firefighter:

27       (1) who, as a result of a written application, has been elected or  
28       appointed to membership in a volunteer fire department;

29       (2) who has executed a pledge to faithfully perform, with or  
30       without nominal compensation, the work related duties assigned  
31       and orders given to the firefighter by the chief of the volunteer



1 fire department or an officer of the volunteer fire department,  
 2 including orders or duties involving education and training as  
 3 prescribed by the volunteer fire department or the state; and  
 4 (3) whose name has been entered on a roster of volunteer  
 5 firefighters that is kept by the volunteer fire department and that  
 6 has been approved by the proper officers of the unit.

7 SECTION 2. IC 36-8-12-10.5 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10.5. (a) This section  
 9 does not apply to an employee of the state subject to IC 4-15-10-7.

10 (b) This section applies to an employee of a political subdivision  
 11 who:

12 (1) is a volunteer firefighter; and

13 (2) has notified the employee's employer in writing that the  
 14 employee is a volunteer firefighter.

15 (c) The political subdivision employer may not discipline an  
 16 employee:

17 (1) for being absent from employment by reason of responding to  
 18 a fire or emergency call that was received before the time that the  
 19 employee was to report to employment; or

20 (2) for leaving the employee's duty station to respond to a fire or  
 21 an emergency call if the employee has secured authorization from  
 22 the employee's supervisor to leave the duty station in response to  
 23 a fire or an emergency call received after the employee has  
 24 reported to work.

25 (d) The political subdivision employer may require an employee  
 26 who has been absent from employment as set forth in subsection (c)(1)  
 27 or (c)(2) to present a written statement from the fire chief or other  
 28 officer in charge of the volunteer fire department at the time of the  
 29 absence indicating that the employee was engaged in emergency  
 30 firefighting or emergency activity at the time of the absence.

31 (e) This section does not require an employer to pay salary or  
 32 wages to an employee who has been absent from employment  
 33 within the meaning of subsection (c) for the time away from the  
 34 employee's duty station.

35 (f) A public servant who permits or authorizes an employee of  
 36 a municipal corporation under the supervision of the public  
 37 servant to be absent from employment or to leave the employee's  
 38 duty station in order to engage in emergency firefighting or  
 39 emergency activity under this section is not considered to have  
 40 committed a violation of IC 35-44-2-4(b).

41 (g) An employee who is disciplined by the employer in violation  
 42 of subsection (c) may bring a civil action against the employer in the  
 43 county of employment. In the action, the employee may seek the  
 44 following:

45 (1) Payment of back wages.

46 (2) Reinstatement to the employee's former position.



- 1 (3) Fringe benefits wrongly denied or withdrawn.
- 2 (4) Seniority rights wrongly denied or withdrawn.
- 3 An action brought under this subsection must be filed within one (1)
- 4 year after the date of the disciplinary action.

